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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,371	01/25/2007	Yoshifumi Kato	1004378.53060 (5000-5306)	9713
85775 7590 06/08/2010 Locke Lord Bissell & Liddell LLP Attn: IP Docketing Three World Financial Center New York, NY 10281-2101				
EXAMINER				
WON, BUMSUK				
ART UNIT		PAPER NUMBER		
2889				
NOTIFICATION DATE		DELIVERY MODE		
06/08/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptopatentcommunication@lockelord.com

Office Action Summary

Application No.

10/574,371

Applicant(s)

KATO ET AL.

Examiner

BUMSUK WON

Art Unit

2889

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4 and 7-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 7, 11 and 14 is/are rejected.
- 7) ☒ Claim(s) 8-10, 12, 13, 15 and 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ ~~Notice of Informal Patent Application~~
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

The amendment filed on 2/24/2010 has been entered.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Response to Arguments

Regarding the rejections under 35 USC 102(e) and 35 USC 103(a), the applicant argues that the rejections are improper because Kawauchi (US 2006/0214157 and US 7,521,861) does not qualify as prior art under 35 USC 102(e). The examiner respectfully agrees. The applicant filed a translation of foreign priority document. Thus, the examiner withdraws the rejections under 35 USC 102(e) and 35 USC 103(a). However, the applicant has not responded to the double patenting rejection. Accordingly, the examiner maintains the double patenting rejection.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the

conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 4, 7, 11, and 14 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 11, and 12 of U.S. Patent No. 7,521,861. Although the conflicting claims are not identical, they are not patentably distinct from each other.

Instant Application	US 7,521,861	Comments
1	1, 11, 12	Claims 1, 11 and 12 of US 7,521,861 recites all the claimed limitations.
4	1, 11, 12	Claims 1, 11 and 12 of US 7,521,861 recites all the claimed limitations.
7, 11	1, 11, 12	Regarding claims 7 and 11, claims 1, 11 and 12 of US 7,521,861 does not specifically recite the EL element is an organic EL element in which at least an organic layer which emits light by application of a voltage is held between the pair of electrodes. However, utilizing organic layer in the art is widely known for the purpose of enhancing efficiency of the device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use organic layer in the device

		recited in the claims 1, 11, 12 of US 7,521,861, for the purpose of enhancing efficiency of the device.
14	1, 11, 12	Regarding claim 14, claims 1, 11 and 12 of US 7,521,861 does not specifically recite the EL element is an inorganic EL element. However, utilizing inorganic layer in the art is widely known for the purpose of reducing manufacturing cost. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use inorganic EL element in the device recited in the claims 1, 11, 12 of US 7,521,861, for the purpose of reducing manufacturing cost

Allowable Subject Matter

Claims 8-10, 12, 13, 15, and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Contact information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BUMSUK WON whose telephone number is (571)272-2713. The examiner can normally be reached on Monday through Friday, 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minh Toan Ton can be reached on 571-272-2303. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Bumsuk Won/
Primary Examiner, Art Unit 2889